FH [redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

CWA/162025

PRELIMINARY RECITALS

Pursuant to a petition filed November 18, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Bureau of Long-Term Support in regard to Medical Assistance (MA), a telephonic hearing was held on December 11, 2014, at Racine, Wisconsin.

The issue for determination is whether the IRIS program correctly seeks to disenroll the petitioner from the IRIS program because it cannot ensure his health and safety needs.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:
Petitioner:

[redacted]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Carrie Haugen, Quality Services Specialist
The Management Group
1 S. Pinckney St.
Suite 320
Madison, WI 53703

ADMINISTRATIVE LAW JUDGE:
Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [redacted]) is a resident of [redacted] County. He enrolled in the IRIS program on September 18, 2013.

2. On September 26, 2013 the IRIS Consultant (IC) attempted to contact petitioner by phone. She could not reach him because his phone number was no longer working.

3. On October 3, 2013 the IC attempted to contact petitioner through his parents as an alternate contact. Contact was made with petitioner at that time.

4. On November 22, 2013 the IC made a face-to-face visit with petitioner. At that time he reported feeling dizzy and was having difficulty breathing. The IC stressed the importance of petitioner contacting his primary care physician for care.

5. On November 26, 2013 the IC spoke with petitioner on the phone and again encouraged the petitioner to contact his insurance and health care providers so that he could find another provider.

6. On February 27, 2014 petitioner rescheduled his quarterly face-to-face visit scheduled for February 28, and rescheduled it to March 3, 2014.

7. On March 3, 2014 the IC made a quarterly face-to-face visit with petitioner. At that time he reported dizziness and pain. He reported he had not contacted any doctors or his insurance to find a primary care physician and visits the emergency room often. The IC stressed the importance of petitioner contacting a primary care physician for care.

8. On March 14, 2014 the ICA Screening Specialist entered a Case Note stating that she had difficulty getting diagnoses for petitioner for the Long Term Care Functional Screen (LTCFS). She reported that a nurse told her she could not provide any diagnoses because petitioner had been discharged as a patient because of non-compliance with primary care physician's orders and missing appointments.

9. On May 22, 2014 the IC and petitioner scheduled a home visit for June.

10. On June 18, 2014 the petitioner requested a reschedule of the home visit.

11. On June 19, 2014 the IC and petitioner made contact on the phone. At that time a referral was made to determine if petitioner would qualify for Self Directed Personal Care (SDPC).

12. On July 9, 2014 the IC and petitioner scheduled a home visit for his annual review for July 14, 2014.

13. On July 19, 2014 the IC and petitioner scheduled a home visit for July 28, 2014.

14. On July 21, 2014 a nurse called petitioner to schedule a SDPC assessment and left a message for him to call her back.

15. On July 23, 2014 a nurse called petitioner to schedule a SDPC assessment and left a message for him to call her back.

16. On July 28, 2014 the IC went to petitioner's home for the scheduled home visit. Petitioner did not make himself available at his home or by phone.

17. On July 29, 2014 petitioner called the IC regarding the missed visit. He stated he was in the emergency room for the second time but that he was getting kicked out again, and that he would call back on Thursday.

18. On July 29, 2014 a nurse called petitioner to schedule a SDPC assessment and left a message for him to call her back.

19. On July 31, 2014 a nurse made contact with petitioner and scheduled a SDPC assessment for August 6, 2014.

20. On August 6, 2014 the nurse went to petitioner's home for the scheduled SDPC home visit. Petitioner did not make himself available at his home. They eventually made phone contact and

petitioner advised that he was at a doctor's appointment and had forgotten about the SDPC visit. The SDPC visit was rescheduled to August 12, 2014.

21. On August 7, 2014 the IC made contact with petitioner and scheduled a home visit for August 18, 2014 due to the missed visit on July 28.

22. On August 12, 2014 the nurse made contact with the petitioner by phone. Petitioner requested that the scheduled visit be rescheduled because he was in the emergency room.

23. On August 14, 2014 the IC contacted petitioner to follow up on the reported emergency room visit and left a message for him to call her back

24. On August 18, 2014 the IC was unable to make the home visit. On August 19, 2014 the IC made contact with the petitioner by phone to reschedule the visit. The IC emailed the SDPC nurse to see if the IC visit and the SDPC visit could be scheduled on the same day.

25. On August 21, 2014 the SDPC nurse mailed a letter to petitioner stating that he needed to contact her by September 5, 2014 to set up a visit or it would be assumed he was no longer interested in the SDPC program.

26. On September 9, 2014 the SDPC referral was closed because of no contact with petitioner.

27. On September 16, 2014 the IC made phone contact with the petitioner. They discussed the "no contact" issues with the SDPC. They scheduled a home visit for September 24, 2014.

28. On September 24, 2014 the IC went to petitioner's home for the scheduled home visit. Petitioner did not make himself available at his home or by phone.

29. On September 26, 2014 the IC has phone contact with the petitioner. He reported being incarcerated from September 18-September 25, 2014. They rescheduled the visit for October 8, 2014.

30. On October 8, 2014 the IC went to petitioner's home for the scheduled home visit. Petitioner did not make himself available at his home or by phone.

31. On October 9, 2014 the petitioner returned the IC's phone call. He reported having missed the October 8 visit due to being stabbed about a week prior, that he was in the hospital, but was not admitted.

32. On October 13, 2014 the IC called petitioner and left a message about health and safety concerns and disenrollment. Later the petitioner called the IC back and reported that he was in the Sail program to address his mental health needs.

33. The IRIS agency issued petitioner a notice on November 10, 2014 stating that effective November 28, 2014 his enrollment in IRIS would be terminated because it could not ensure his health and safety.

DISCUSSION

Medical Assistance-Waiver recipients must be allowed the option of directing their own cares. IRIS is waiver program built to allow self-directed supports. The petitioner receives benefits through this program, which stands for Include, Respect, I Self-Direct. It is a fee-for-service alternative to Family Care, PACE, or Partnership for individuals requesting a long-term care support program in Family Care counties that was developed pursuant to waiver obtained through section 6087 of the Deficit Reduction Act of 2005 (DRA) and section 1915(j) of the Social Security Act. The waiver document providing the program's authority is available at http://www.cms.gov/MedicaidStWaivProgDemoPGI/MWDL/list.asp. The federal government's general guidance for the program is found at 42 C.F.R. § 441.450 – 484. Those regulations require the Department's agent to assess the participant's needs and preferences, and then develop a service plan based on the assessed needs. *Id.*, § 441.466. The service plan may include

personal care and homemaker services. *Id.*, §440.180(b). Further, "all of the State's applicable policies and procedures associated with service plan development must be carried out ..." *Id.* § 441.468. Wisconsin IRIS policies are found online at http://www.dhs.wisconsin.gov/bdds/iris/IRISPolicySummary.pdf.

Wisconsin IRIS policies allow the program to end a participant's enrollment when one or more of these conditions exist:

- The participant's health and safety is at risk.
- Purchasing authority is mismanaged. For example, this includes but is not limited to:
  - o Fraud.
  - o Misrepresentation or willful inaccurate reporting of information.
- The participant moves to an ineligible living arrangement.
- The participant resides in a hospital, skilled nursing facility or state institution for longer than three months after the admission date to the facility. Note that if the participant informs the IRIS Program one of these settings will be a permanent living setting, then this is considered a voluntary disenrollment. The participant receives a Fair Hearing Notice related to his or her appeal rights.
- Failure to comply with Medicaid functional or financial requirements. This includes participating in the minimal number of required Support and Service Plan reviews.
- Failure to pay a Medicaid cost share or to meet Medicaid spend-down obligations.
- The participant does not identify a need for any IRIS Program service or support.

Id.

The program seeks to end the petitioner's enrollment. It contends his health and safety is at risk because he has made himself unavailable for required IRIS visits, and has not followed up on securing a physician or on SDPC. The agency must prove by the preponderance of the credible evidence that the petitioner's health and safety is at risk. The IRIS policies offer no guidance on what constitutes risk, but I assume that the risk must be more than a remote possibility. The petitioner has a variety of diagnoses, has reported to IRIS that he does not feel well and that he cannot perform many self cares. He has also reported several emergency room visits. The LTFS results show that he is not only disabled but requires the care generally found in a nursing home. See Exhibit I1.

The IRIS program bestows considerable independence on its recipients. But the program and its workers have a duty to supervise those within the program to ensure their safety. Petitioner testified that his reasons for missing appointments were either because his phone was not working, he was in the emergency room, or he was incarcerated. The latter is true for the missed September 24 visit. The emergency room visit was verified for the July 28 missed visit per a phone call from that hospital. However, these semi-regular emergency room visits are problematic. Petitioner's reasoning for not securing a primary care physician was that he could not get transportation to see a doctor. This differs from the agency's Case Notes stating that he did not like the doctors in [redacted] and/or that he could get a ride from family or friends. It also obviously raises the question as to why he could always get to an emergency room. Problems with a phone are understandable, however, it doesn't answer the question as to why he could not respond to a letter mailed to him about the SDPC. Petitioner's testimony was at times evasive, combative and contradictory. He either got disconnected or hung up the phone in the instant hearing. This administrative law judge called him back, but the phone went to voicemail and a message was left for him. Petitioner did not return the call or provide any further information post-hearing.

The IRIS program has waited over a year from when the problems began to develop to when it finally took action to end the petitioner's enrollment in the program. I find that his own actions, which he has had time to correct, made it impossible for the IRIS program to ensure his health and safety. Therefore, the

program correctly seeks to end his benefits because his health and safety is at risk. The petitioner may still reapply for this program or another MA program. It is suggested he find an authorized representative to help him navigate the process.

CONCLUSIONS OF LAW

The IRIS program correctly seeks to end the petitioner's participation in the program because it cannot ensure his health and safety.

THEREFORE, it is **ORDERED**

The petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision.** Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied. The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 29th day of January, 2015

\sKelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals

State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 29, 2015.

Bureau of Long-Term Support